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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

- - - - -x

GEORGIA VOCATIONAL :
REHABILITATION AGENCY :
BUSINESS ENTERPRISE :
PROGRAM, et al., :
Plaintiffs, : Civil Action No.
v. : 4:18-cv-148
UNITED STATES OF :
AMERICA, : Full Version
Defendant. : Contains Confidential

- - - - -x Information

Videotaped Deposition of the
UNITED STATES OF AMERICA,
By and Through Its Designee
GARY STEVENS

Conducted Virtually
Tuesday, August 30, 2022
12:38 p.m.

1	my question. I'll do my best to let you finish	12:41:53
2	your answer. If you haven't finished, just let me	12:41:55
3	know. Is that okay?	12:41:59
4	A Yes, sir, perfect.	12:42:00
5	Q Appreciate it. And just as you -- as you	12:42:02
6	did just now, please make sure that all of your	12:42:05
7	answers are verbal so that the court reporter can	12:42:07
8	get them down rather than shaking -- shaking your	12:42:11
9	head or nodding your head. Okay?	12:42:14
10	A Correct.	12:42:19
11	Q If at any time you want to take a break	12:42:19
12	during this deposition, you're welcome to do so.	12:42:21
13	We'll just ask that if there's a question pending,	12:42:24
14	that you finish answering the question before you	12:42:25
15	take a break. Okay?	12:42:28
16	A Okay.	12:42:30
17	Q All righty. What is your current position	12:42:32
18	with the Army, Mr. Stevens?	12:42:38
19	A Currently, I am a division chief, an 1102,	12:42:41
20	which is a supervisory contract specialist for the	12:42:48
21	Mission and Installation Contracting Command,	12:42:52
22	Installation Readiness Center, at Fort Sam	12:42:56

1	Houston.	12:43:05
2	Q And in that position, what are your	12:43:05
3	responsibilities?	12:43:11
4	A Currently, I have the Full Food Services	12:43:11
5	Division chief. So, we are tasked with awarding	12:43:16
6	contracts for full food services and DFA, dining	12:43:19
7	facility attendant contracts for the Army. We	12:43:23
8	have currently been assigned most of the full food	12:43:28
9	service and dining facility contracts but not all	12:43:31
10	of them.	12:43:33
11	Q And you said you have the Full Food	12:43:37
12	Services Division chief. Does that person report	12:43:41
13	to you or you are that person?	12:43:43
14	A I am that person.	12:43:46
15	Q Okay. And in that capacity, you said you	12:43:47
16	have responsibility for most, but not all, of the	12:43:53
17	Army's full food service and dining facility	12:43:56
18	attendant contracts. Did I understand that	12:43:59
19	correctly?	12:44:01
20	A That is correct.	12:44:01
21	Q How many full food services contracts are	12:44:05
22	you responsible for?	12:44:07

1 A Currently we have awarded 20 -- I believe 12:44:11
2 it's 23 as of yesterday, and then we have 12:44:16
3 another -- I believe it's 12 -- 12 or 13 that are 12:44:21
4 still in the works. 12:44:27

5 Q And that's -- if I say, "FFS," you 12:44:30
6 understand that to mean full food service; 12:44:33
7 correct?

8 A Yes. 12:44:36

9 Q So, you have award -- you, the Army -- 12:44:36
10 under your supervision, the Army has awarded 23 12:44:40
11 full food service contracts? 12:44:43

12 A Correct. 12:44:46

13 Q How many of those full food service 12:44:48
14 contracts have been awarded to state licensing 12:44:51
15 agencies under the Randolph Sheppard Act? 12:44:54

16 A I think all of them, with the exception 12:44:58
17 of -- let's see. I think there was only three -- 12:45:01
18 three or maybe four that were not awarded to the 12:45:09
19 SLA. 12:45:16

20 Q Okay. How many dining facility attendant 12:45:16
21 contracts are you responsible for? 12:45:24

22 A In that number of the 23, that also 12:45:27

1 included full food services and dining facility 12:45:30

2 contracts. 12:45:33

3 Q Okay. So, are there -- of the 23, are 12:45:34

4 some of them DFA only? 12:45:45

5 A Yes. 12:45:49

6 Q Okay. How many of those 23 contracts are 12:45:50

7 only dining facility attendants? 12:45:54

8 A I believe at this time, it was only four, 12:45:58

9 maybe five, that were just strictly DFAs. 12:46:02

10 Q And of those four or five, how many have 12:46:13

11 been awarded to a state licensing agency? 12:46:16

12 A To my knowledge, there was only one, and 12:46:19

13 that was -- I want to say it was Fort Bliss, and 12:46:24

14 then the others are under the Ability One 12:46:30

15 procurement list. 12:46:33

16 Q Okay. Of the 18 or 19 contracts that you 12:46:36

17 have responsibility for that are full food 12:46:51

18 service, are any of those on Ability One's 12:46:55

19 procurement list? 12:47:00

20 A There's only one that is a dining facility 12:47:03

21 and full food service contract that is on the 12:47:07

22 Ability One list at this time, and that is 12:47:11

1 actually one that we just awarded yesterday. 12:47:12

2 Q Where is that? 12:47:15

3 A That's at Fort Hood. 12:47:16

4 Q Do you have any objections to awarding 12:47:37

5 contracts under the Randolph Sheppard Act? 12:47:39

6 A Do I have any objections to it? 12:47:44

7 Q Yes, sir. 12:47:46

8 A No, none at all. 12:47:48

9 Q In your experience, are contracts awarded 12:48:00

10 under the Randolph Sheppard Act any more or less 12:48:07

11 expensive, on average, than contracts awarded to 12:48:12

12 Ability One, one of its contractors? 12:48:19

13 A Could you repeat the question one more 12:48:19

14 time, please. 12:48:22

15 Q In your experience, are contracts awarded 12:48:22

16 pursuant to the Randolph Sheppard priority any 12:48:24

17 more or less expensive to the Army than contracts 12:48:27

18 awarded pursuant to Ability One's priority? 12:48:30

19 A The -- I guess the biggest difference 12:48:40

20 there is, with the exception of only one, we do 12:48:42

21 not have any full food service contracts that are 12:48:47

22 under the Ability One program or the Ability One 12:48:50

1 as far as the arbitration and other discussions, 13:02:22

2 I'm not aware of what's going on with that. 13:02:26

3 Q Let me turn to some more Fort Benning 13:02:43

4 specific questions, if that's okay with you, 13:02:46

5 Mr. Stevens. 13:02:48

6 Could you describe your role with respect 13:02:49

7 to food services at Fort Benning. 13:02:52

8 A So, for the Fort Benning full food 13:02:57

9 services contract, I am what is considered the 13:03:00

10 procuring contracting officer. So, the full food 13:03:02

11 services in my division, the actions that we take 13:03:07

12 on is strictly the pre-award side of it only. 13:03:10

13 So, we go out; we gather all of the 13:03:14

14 requirement documents and we put them together. 13:03:18

15 We issue solicitations. We receive proposals. We 13:03:20

16 evaluate proposals. We make award decisions and 13:03:23

17 we award contracts. And then after a contract is 13:03:26

18 awarded, we transfer them back to the local 13:03:30

19 offices for administration. 13:03:35

20 So, in the Fort Benning full food services 13:03:36

21 contract, I am responsible for doing just the 13:03:38

22 pre-award side of it and doing all things I just 13:03:41

1 the information that we need to go out and solicit 13:17:49
2 for full food services. So, that's where we get 13:17:53
3 our information from. 13:17:57

4 Q So, we had the opportunity this morning to 13:18:21
5 take the deposition of Deborah Barthell, the 13:18:24
6 contracting officer's representative, and she 13:18:27
7 identified a Ms. Addison as the contracting 13:18:31
8 officer. Could you walk through for me, please, 13:18:34
9 the hierarchy -- actually, strike that. 13:18:41

10 I understand from what you said, there is 13:18:44
11 sort of the operations side, which is Ms. Barthell 13:18:48
12 and the folks above her and the folks under her, 13:18:52
13 for that matter, and then there's the procuring 13:18:55
14 side, and that's you and the folks above and below 13:18:58
15 you. Do I understand that correctly? 13:19:01

16 A Yes, that's -- that's pretty close. So, 13:19:05
17 we have a -- to simplify it, we call it a 13:19:07
18 pre-award and a post-award side. So, we work 13:19:11
19 everything from the pre-award up to the award. 13:19:15
20 And then you have your admin contracting office, 13:19:17
21 administrative contracting office, that would be 13:19:21
22 doing everything in the post-award side, which 13:19:23

1 would be the actual oversight of the contract 13:19:26

2 execution itself. 13:19:29

3 Q So, you're in charge of the pre-award 13:19:37

4 side, correct, for this -- for this contract? 13:19:40

5 A Yes, sir. 13:19:43

6 Q Have you ever been to Fort Benning with 13:19:44

7 respect to this contract? 13:19:51

8 A No, sir. 13:19:53

9 Q In whatever way is easiest for you, could 13:20:02

10 you just go through the hierarchy of folks who 13:20:05

11 report, either from the bottom going up, up to 13:20:08

12 you, or from you going down, who's responsible for 13:20:11

13 the pre-award side of the contract, what their 13:20:16

14 names are and what their positions are? 13:20:18

15 A I'll try to. Again, you know, I'm -- I'm 13:20:22

16 a little bit cautious about naming names in the 13:20:29

17 organization and in the chain of command above 13:20:34

18 myself. 13:20:39

19 Q Okay. Let's go -- let's just -- for now, 13:20:39

20 let's stay below yourself. As I say, whatever is 13:20:42

21 easiest for you, start at the bottom and go up or 13:20:47

22 start at you and go down on the pre-award side of 13:20:51

1 want to be within 20 feet of the Randolph Sheppard 13:28:55

2 Act, if at all possible"? 13:28:58

3 MR. PORTER: I just want to put an 13:29:00

4 objection on the record that we are far afield 13:29:02

5 from the topics in the 30(b)(6), as well as the 13:29:04

6 representations in the motion to the Court as to 13:29:08

7 why Mr. Stevens was needed for a deposition. 13:29:10

8 With that, go ahead, Mr. Stevens, answer 13:29:14

9 his question if you can. 13:29:16

10 A And you said 2014? I -- 13:29:20

11 Q Yes, sir. 13:29:22

12 A I have no knowledge of any email or 13:29:23

13 anything along that lines. 13:29:26

14 Q Have you ever heard anything along that 13:29:28

15 lines from anyone at the Army, that they want to 13:29:30

16 stay away from the Randolph Sheppard Act, if at 13:29:32

17 all possible? 13:29:36

18 MR. PORTER: Continuing objection. 13:29:37

19 Q You can answer. 13:29:42

20 A I have not heard any statements like that, 13:29:43

21 and, you know, that's -- I would say that coming 13:29:46

22 from my division, that's -- that's not our -- 13:29:50

1 that's not our intent. That's not our sentiment. 13:29:54

2 I have absolutely nothing against the SLAs or the 13:29:57

3 Randolph Sheppard Act, so, no, that's not in -- 13:30:01

4 not in my division, not what we do. 13:30:07

5 Q Thank you. So, this morning, as I 13:30:16

6 mentioned earlier and as I think you knew, we had 13:30:19

7 the opportunity to take Mr. Barthell's deposition 13:30:22

8 as the contract -- she's the -- as you know, the 13:30:27

9 contracting officer's representative, as you 13:30:30

10 described, the contracting officer's eyes and ears 13:30:32

11 at Fort Benning. 13:30:35

12 And Ms. -- Ms. Barthell testified that she 13:30:37

13 is entirely satisfied with the food services being 13:30:42

14 provided by Rolling Hills and GVRA at Fort 13:30:44

15 Benning. Does the Army agree that GVRA and 13:30:51

16 Rolling Hills are currently doing a good job of 13:30:56

17 provide food services at Fort Benning? 13:30:58

18 A I have not personally looked at the 13:31:03

19 performance of -- any of the past performance on 13:31:06

20 the bridge contracts that are being performed 13:31:10

21 right now, so the -- the current bridge contract. 13:31:12

22 I have not heard any negative issues or 13:31:16

1 you said, for anything, as long as they get the 13:57:45

2 proper approvals; correct? 13:57:47

3 A Yes, it's still -- yes, I mean it's, you 13:57:50

4 know, kind of being broad but, essentially, you 13:57:54

5 know, if you have the proper approvals and 13:57:56

6 justifications, you know, most contracts you can 13:57:59

7 modify. In some cases, it may be more appropriate 13:58:03

8 to award a standalone contract for a portion of 13:58:07

9 something. So, I mean there's different ways to 13:58:11

10 do it. 13:58:14

11 Q Okay. So, I want to go through the 13:58:16

12 changed circumstances that you listed in your -- 13:58:20

13 or the allegedly changed circumstances that you 13:58:24

14 listed in your declaration, Mr. Stevens, as 13:58:26

15 justification for modifying the preliminary 13:58:29

16 injunction. 13:58:32

17 The first one you listed was an increased 13:58:33

18 need for takeout meals, but would you agree with 13:58:36

19 me that as of today, there is no increased need 13:58:40

20 for takeout meals at Fort Benning? 13:58:43

21 A I believe there still is a need to have 13:58:47

22 that takeout meal priced and in a new contract, 13:58:50

1 although it may not be used today, but we do 13:58:54
2 anticipate that it would be used in the future, 13:58:58
3 and it does come in line with the category of 13:59:01
4 management in all of our full food services 13:59:06
5 contracts, so we're trying to get them all 13:59:10
6 aligned, and that -- that is part of it, as well. 13:59:12

7 Q I understand that. Let me repeat back 13:59:15
8 what I think I just heard, and tell me if I 13:59:18
9 understood you correctly. 13:59:22

10 The Army is moving towards new contracts 13:59:24
11 for full food services that include line items for 13:59:34
12 takeout, line items for 100 percent takeout, 13:59:41
13 anticipating that it may need those things in the 13:59:44
14 future, but there is no need today or in the 13:59:47
15 immediate future for -- to make use of those 13:59:52
16 options at Fort Benning; correct? 13:59:58

17 A This -- 14:00:02

18 MR. PORTER: Objection to the extent it 14:00:03
19 calls for him to speculate. 14:00:04

20 Q You can answer. 14:00:08

21 A This -- this is from -- from my position 14:00:10
22 as awarding these contracts is that we are under 14:00:13

1 the impression it's not if they will be needed, 14:00:18
2 it's when they will be needed, whether it's 14:00:21
3 through a pandemic or a -- a deployment of, you 14:00:24
4 know, a large number of soldiers or facilities 14:00:29
5 being closed, so they have to do takeout. So, 14:00:32
6 it's not an "if," it's a "when" they will be 14:00:36
7 needed. 14:00:38

8 Q So -- but sitting here today, does the 14:00:41
9 Army have any knowledge of a specific need at any 14:00:47
10 time in the remainder of 2022 to make use of those 14:00:50
11 changes? 14:00:55

12 A I can't say to anything specific in the 14:00:58
13 remainder of 2022 at Fort Benning. 14:01:01

14 Q And even if you were allowed to solicit a 14:01:04
15 new contract, that new solicitation wouldn't go 14:01:08
16 into effect until, at the earliest, summer of 14:01:11
17 2023; correct? 14:01:15

18 A I -- I wouldn't give a date. I would say 14:01:19
19 it would probably actually be able to be posted 14:01:22
20 much sooner than that. I would like to see it, 14:01:27
21 you know, if we were approved to do it, you know, 14:01:30
22 the sooner the better, but I don't think it would 14:01:32

1 take us until summer '23, by any means.

14:01:35

2 Q Well, you-all signed a bridge contract
3 with GVRA that runs until June of 2023; correct?

14:01:39

14:01:43

4 A Okay. So, there's a clarification there.

14:01:48

5 So, we could issue a solicitation, but that
6 doesn't mean we would be ready to award until

14:01:51

14:01:55

7 later on. So, typically, from solicitation

14:01:57

8 release to receipt of proposal could be anywhere

14:02:01

9 from 90 days, sometimes more, and then we go to

14:02:06

10 evaluation and proposal.

14:02:13

11 So, to, I guess, state it better, from the

14:02:15

12 time we issue a solicitation to award, if we were

14:02:18

13 given approval to issue a solicitation before the

14:02:23

14 end of the year, it would be -- it would be

14:02:25

15 summer -- summer '23. So, you would be correct on

14:02:28

16 that point.

14:02:31

17 Q In addition to what you described as an

14:02:33

18 increased need for takeout meals, that was the

14:02:53

19 first justification you listed as a changed

14:03:00

20 circumstance. The second one was changes in wages

14:03:03

21 since 2018; correct?

14:03:07

22 A I believe, yes.

14:03:11

1 Q And the changes in wages since 2018 have 14:03:13
2 all been adequately accommodated under the bridge 14:03:23
3 contracts; correct? 14:03:26

4 A They should be. They should be -- the 14:03:30
5 bridge contracts should be operating under the 14:03:32
6 current CBA, collective bargaining agreements. 14:03:35

7 Q And the bridge contracts, therefore, there 14:03:38
8 was a currently operating under the current CBA, 14:03:46
9 including complying with President Biden's 14:03:49
10 Executive Order 14026 for a \$15 minimum wage; 14:03:52
11 correct?

12 A That should be correct, as well. They 14:03:59
13 should be operating under the new executive order 14:04:02
14 and the -- a CBA. 14:04:04

15 Q So, would you agree that there's no need 14:04:06
16 for a new contract to comply with the wages that 14:04:10
17 are currently in effect at Fort Benning; correct? 14:04:17

18 A I would say that, again, you know, your 14:04:21
19 bridge contracts are awarded, and they would have 14:04:25
20 to be in accordance with the CBAs, and now that 14:04:28
21 it's past the January of '22, that the executive 14:04:33
22 order would be in place, so -- so, yes, I mean new 14:04:36

1 solicitation, they would still have to go out. 14:04:41

2 But, again, what I was comparing to was a 14:04:43
3 2018 solicitation to the 2000 -- I'll call it the 14:04:46
4 "2022 solicitation." So, there's the difference. 14:04:52

5 Bridge contracts are separate from the 14:04:57
6 solicitation. In my declaration, that's what I 14:04:58
7 was comparing it to. 14:05:04

8 Q So, you were comparing current wages to 14:05:04
9 what was under the solicitation in 2018 but, in 14:05:07
10 fact, the 2018 wages have changed as we -- as the 14:05:10
11 years have passed and there have been new 14:05:15
12 collective bargaining agreements and the new 14:05:18
13 executive order from the President; correct? 14:05:20

14 A Correct, and that's my understanding is 14:05:22
15 the comparison is from the 2018 solicitation, 14:05:24
16 which is what we're still, I guess, in arbitration 14:05:28
17 on. It's not -- 14:05:32

18 Q No, I appreciate -- 14:05:33

19 A It's not -- it's not comparing, you know, 14:05:34
20 the bridge contracts. I'm just comparing to 14:05:36
21 the 2018 solicitation. 14:05:40

22 Q I appreciate that, Mr. Stevens. I -- my 14:05:42

1 question was just a little bit different, which is 14:05:46
2 is there anything in any way that the preliminary 14:05:48
3 injunction prevents the Army from paying the wages 14:05:55
4 required under the collective bargaining agreement 14:06:02
5 or the executive order? 14:06:05

6 A I would not think so. 14:06:09

7 Q The third thing that you listed in your 14:06:15
8 declaration as a justification for -- or as a 14:06:17
9 changed circumstance that would justify modifying 14:06:25
10 the preliminary injunction was the Army's desire 14:06:28
11 to change the contract type from noncommercial to 14:06:32
12 commercial. 14:06:38

13 And did I understand you correctly when we 14:06:39
14 were talking about this before, the Army has a 14:06:41
15 desire in the future to have food service 14:06:44
16 contracts be categorized as commercial; correct? 14:06:49

17 A What we found in 2018, and this was about 14:06:58
18 the same time that this solicitation was posted 14:07:01
19 and released, that we had issued a separate 14:07:04
20 solicitation as a noncommercial, and we were 14:07:08
21 actually protested. There was numerous different 14:07:10
22 questions and concerns with the fact that the 14:07:16

1 government, the Army, was utilizing a 14:07:19

2 noncommercial approach. 14:07:22

3 And, so, we went back and we re-looked at 14:07:25

4 the commerciality and determined that full food 14:07:28

5 services were commercial in nature. So, we have 14:07:31

6 since categorized all full food service actions as 14:07:35

7 commercial. So, all contracts that we've awarded 14:07:39

8 since 2018 have been commercial. 14:07:42

9 Q But the Army still has some full food 14:07:46

10 service contracts in effect not only at Fort 14:07:49

11 Benning but elsewhere that continue to be 14:07:52

12 noncommercial; correct? 14:07:55

13 A Yes, sir, that's probably true, but that 14:07:57

14 is another reason why the Army has gone to the 14:08:00

15 Center of Excellence or to our Full Food Services 14:08:04

16 Division is to get all full food services the 14:08:08

17 same, to get them all aligned as commercial 14:08:11

18 ID/IQs, five-year base ordering periods, the 14:08:14

19 same -- same essential PWS, the same requirements 14:08:16

20 across the Army so we don't have that wide 14:08:20

21 variance. 14:08:23

22 And it is much easier for contractors on a 14:08:23

1 commercial solicitation/commercial contract, and 14:08:27
2 eventually, I would think, it would actually be 14:08:30
3 cheaper for contractors to operate under 14:08:33
4 commercial vice noncommercial. 14:08:36

5 Q I appreciate that. Has the Army done 14:08:37
6 anything to -- to cancel or change existing 14:08:44
7 noncommercial food services contracts in order to 14:08:49
8 re-solicit them as commercial? 14:08:56

9 A I think it's just the normal attrition 14:08:59
10 because since we have -- since we've been taken 14:09:01
11 over, like I said, we've -- we've -- we've 14:09:03
12 completed, I want to say, it's probably 60, 70, 14:09:04
13 75 percent of all Army contracts right now, and 14:09:10
14 we're actually coming around on the second -- 14:09:14
15 second iteration of the requirements. 14:09:17

16 So, as any of them that were remaining 14:09:19
17 noncommercial coming up for recompetete or re -- 14:09:22
18 competition, that we are doing them as commercial. 14:09:25

19 Q So, if GVRA had been awarded this contract 14:09:30
20 to begin in early 2019, it would have been a 14:09:34
21 five-year plus six-month dash-eight extension that 14:09:37
22 would have taken to the -- them to the middle of 14:09:41

1 2024, and you would have just -- you, the Army, 14:09:44
2 would have just left this contract as 14:09:49
3 noncommercial through the middle of 2024, and 14:09:51
4 then, when you re-solicited it to begin in the 14:09:54
5 middle of 2024, you would have changed it to 14:09:57
6 commercial; is that correct? 14:10:00

7 A If it would have still -- if it had not 14:10:01
8 had any other outliers like, you know, performance 14:10:06
9 issues or anything like that, if it had been 14:10:09
10 awarded at that time in early 2019, it would 14:10:11
11 actually be back on our radar. We would actually 14:10:15
12 be working on a re-compete for it because a 14:10:19
13 contract of this size, they do take a long time to 14:10:22
14 get through the process. So, we would probably 14:10:25
15 already be working on it, and we'd already be 14:10:27
16 looking at it for a re-compete. 14:10:29

17 But to answer your question, yes, sir. 14:10:31

18 Q But to answer my question, you would have 14:10:33
19 left -- absent performance issues, you would have 14:10:35
20 left the -- the current contract for five years 14:10:38
21 and six months and then re-competed it as a 14:10:41
22 commercial contract to begin in the summer of 14:10:45

1 2024; is that correct? 14:10:47

2 A I would say, more than likely, we probably 14:10:51

3 would have. Again, you know, it's -- it's a lot 14:10:54

4 of time and -- time and labor to put into these. 14:10:57

5 So, without any other outside issues, concerns, we 14:11:02

6 probably would have left it and just let it run 14:11:04

7 its course and then recompete it. 14:11:07

8 Q From -- from the point of view of the 14:11:10

9 soldier being fed, is there any difference whether 14:11:14

10 the contract is categorized as commercial or 14:11:17

11 noncommercial? 14:11:20

12 A From food actually hitting the plate, I -- 14:11:26

13 I don't -- I can't think of anything off the top 14:11:30

14 of my head that would really make a difference to 14:11:31

15 a soldier getting fed. 14:11:34

16 Q In terms of the services that the 14:11:43

17 contractor is providing, is there any difference 14:11:44

18 whether it's categorized as commercial or 14:11:47

19 noncommercial? 14:11:51

20 A The -- the actual labor services performed 14:11:51

21 by the contractor, yes, I would say there are 14:11:54

22 differences. And, you know, feeding the soldiers, 14:11:56

1 the soldiers getting fed, they're probably --

14:12:00

2 they're not going to see it but, you know, the

14:12:03

3 actual work performed would be slightly different

14:12:06

4 as far as especially oversight.

14:12:11

5 Q Okay. And the commercial contract would

14:12:14

6 just give the contractor a little more flexibility

14:12:26

7 with respect to that oversight; is that correct?

14:12:28

8 A Actually, commercial contracts give

14:12:32

9 everybody a little more flexibility. It's -- it's

14:12:35

10 a win/win. You know, in my opinion, doing

14:12:39

11 contracting for almost 20 years, it's a win/win

14:12:41

12 for both industry, the contractor, and the

14:12:43

13 government to do them commercial. And it's -- you

14:12:46

14 know, essentially, it's the right thing to do.

14:12:49

15 Q So, what are the differences, in terms of

14:12:52

16 a food services contract, depending on whether

14:12:55

17 it's categorized as noncommercial or commercial?

14:12:59

18 A Well, what -- what the contracting officer

14:13:04

19 would be looking at when they're trying to make a

14:13:07

20 commercial determination is is it something that

14:13:10

21 would be typically provided by general industry

14:13:13

22 off-the-shelf type stuff. So, would it be

14:13:18

1 something very similar to what's being fed --

14:13:21

2 being utilized in a school, a school system, in a

14:13:23

3 hospital, different things of that nature -- a

14:13:27

4 cafeteria, you know, as Randolph Sheppard Act, you

14:13:30

5 know, talks about cafeteria style. So, we look at

14:13:34

6 those type things as to make a commercial

14:13:37

7 determination.

14:13:39

8 Commercial is easier in the fact that

14:13:42

9 there's a lot less restrictions; there's a lot

14:13:45

10 less clauses that the contractor is ultimately

14:13:48

11 responsible for. Rather, there may be something

14:13:51

12 that's very small, very uncommon. In a

14:13:55

13 noncommercial, it's there. So, something could

14:13:58

14 come up and, you know, they would still be

14:14:01

15 responsible for it.

14:14:04

16 In a commercial, it's a lot more

14:14:05

17 forgiving. It is more a commercial standard

14:14:08

18 practice. So, what commercial standards practices

14:14:11

19 are used in, you know, hospital or cafeteria or

14:14:14

20 school could still be used in our government

14:14:19

21 contracts under commercial -- under commerciality.

14:14:22

22 Q Any other material differences between

14:14:29

1 changed circumstances?

14:55:53

2 A I would say, "yes," if they were on a --

14:55:54

3 and I'll call it a "permanent contractor on a

14:55:58

4 permanent -- a competed contract." Other than --

14:56:03

5 put it this way: Other than a bridge contract, I

14:56:06

6 would say, "yes, your statement is correct?

14:56:08

7 MR. FREEMAN: Thank you. No further

14:56:13

8 questions.

14:56:14

9 MR. PORTER: Mr. Stevens, I have a few

14:56:16

10 questions for you.

14:56:18

11 EXAMINATION BY COUNSEL ON BEHALF OF THE DEFENDANT

14:56:19

12 BY MR. PORTER:

14:56:20

13 Q Just to follow up with last question

14:56:20

14 Mr. Freeman asked you, the contract that existed

14:56:24

15 prior to the 2018 solicitation was a so-called

14:56:26

16 "permanent contract"; correct?

14:56:30

17 A Yes, sir.

14:56:33

18 Q And it was -- it was a contract of the

14:56:34

19 nature where there was a one-year base period

14:56:36

20 followed by option years and out years up through

14:56:39

21 five; correct?

14:56:45

22 A I believe that is correct.

14:56:45

1 Q And the 2018 solicitation sought to issue
2 the same type of contract, a one-year base with
3 option years; correct?

14:56:46

14:56:50

14:56:53

4 A Correct.

14:56:56

5 Q The proposal that the Army would like to
6 do now would change the whole format of that to
7 a -- a contract that -- that was a five-year
8 period with task orders that may or may not be
9 issued; is that true?

14:56:58

14:57:01

14:57:05

14:57:09

14:57:12

10 MR. FREEMAN: Objection as to form.

14:57:15

11 A That is correct. So, the Army would like
12 to issue a solicitation for a five-year base
13 period with the dash -- and we call it "the dash
14 eight," as an option to extend for six months. It
15 actually makes it easier for the contractor and
16 for the government contracting officials to
17 administer the contract.

14:57:18

14:57:21

14:57:26

14:57:32

14:57:35

14:57:37

14:57:39

18 Q And one of the -- one of the things you
19 were just saying to Mr. Freeman was that, in
20 essence, the bridge contract situation that we are
21 currently in is different in terms of
22 modifications than a permanent contract would be;

14:57:41

14:57:43

14:57:46

14:57:49

14:57:53

1	is that right?	14:57:59
2	MR. FREEMAN: Objection.	14:57:59
3	A Yes, yes, so, a bridge contract is much	14:58:02
4	different because, in terms of a bridge contract,	14:58:05
5	it is to maintain the status quo and typically	14:58:08
6	used in a case for, like, a protest. So, for a	14:58:12
7	CCA stay, you need to maintain the status quo of	14:58:18
8	the contract. Same thing in this case with the	14:58:20
9	injunction; it would have to maintain as close as	14:58:22
10	we can to the status quo because of the CCA, the	14:58:26
11	Competition and Contracting Act, where normally we	14:58:32
12	would be out competing but, you know, when we're	14:58:35
13	in a sole source environment, it's much more	14:58:38
14	stringent guidelines that we have to follow.	14:58:40
15	So, yes, they are different.	14:58:44
16	Q And, so --	14:58:45
17	MR. FREEMAN: Mr. Porter -- Mr. Porter,	14:58:47
18	could I -- so I don't have to keep interrupting	14:58:50
19	you, can I have a continuing objection to your	14:58:51
20	leading questions, please?	14:58:54
21	MR. PORTER: Sure.	14:58:55
22	MR. FREEMAN: Thank you.	14:58:56

1	BY MR. PORTER:	14:58:58
2	Q The bridge contract that is -- is in place	14:58:58
3	now, are bridge contracts forward-looking?	14:59:00
4	A No, bridge contracts, when they are	14:59:07
5	awarded, again, they -- we have to have a	14:59:11
6	justification and approval, and part of that	14:59:14
7	justification and approval has to be how the	14:59:16
8	contracting officer or the contracting office	14:59:21
9	plans to get that contract to a point where it can	14:59:24
10	be competed.	14:59:28
11	So, that's one of the things that we have	14:59:30
12	to justify is -- and I can give a quick example,	14:59:31
13	if you like, or, if not, it's up to you-all.	14:59:35
14	Q Please, would you.	14:59:39
15	A Okay. So, example, if you have a sole	14:59:40
16	source contract, it's on a bridge contract and, in	14:59:44
17	your justification, you can explain that, in the	14:59:52
18	period of after the first six months, you're going	14:59:55
19	to try to get that PWS or that requirement to a	14:59:58
20	point where it can be competed amongst either, you	15:00:02
21	know, full and open competition or small	15:00:05
22	businesses or whatever, so you have to have an out	15:00:08

1 of that sole source environment of a way to get 15:00:12
2 that requirement to a -- to meet the Competition 15:00:14
3 and Contracting Act. So, that's part of your 15:00:19
4 justification and approval. 15:00:23

5 Q Are there limits to how far you can go or 15:00:24
6 how long you can go with bridge contracts? 15:00:27

7 A I think, typically, I -- I think, 15:00:32
8 typically, it's they try to stay under one year. 15:00:37
9 So, you can a lot of times do a six-month with a 15:00:41
10 six-month option to extend. In certain 15:00:45
11 circumstances, you can go longer but, again, it 15:00:48
12 has to be a very good justification. 15:00:50

13 Q Mr. Freeman was asking you questions about 15:00:56
14 the ability to modify or change or add line items 15:00:58
15 to a bridge contract. Do any of those types of 15:01:05
16 changes alter the 2018 solicitation that is now 15:01:08
17 the subject of this litigation? 15:01:13

18 MR. FREEMAN: Objection. 15:01:21

19 A I'm sorry. Who was that question to? 15:01:27

20 Q That was -- that was to you, Mr. Stevens. 15:01:29
21 My question was Mr. Freeman had talked to you 15:01:32
22 about modifications to bridge contracts for the 15:01:34

1 various changes you've described and the 15:01:38
2 circumstances you've described. And my question 15:01:41
3 to you, do those changes to bridge contracts 15:01:44
4 modify in any way or form the 2018 solicitation 15:01:47
5 that is the subject of this litigation? 15:01:53

6 MR. FREEMAN: Objection. 15:01:57

7 A So, I'm not sure what all modifications 15:02:01
8 have been done to the bridge contract. I know, 15:02:04
9 again, there's been numerous bridge contracts, so 15:02:06
10 I'm not sure how many different modifications 15:02:09
11 there's been. 15:02:12

12 Again, all contracting officers are 15:02:13
13 cautioned any time they are modifying a bridge 15:02:16
14 contract because it's -- it can vary easily get 15:02:19
15 outside of the scope, to within the scope of work 15:02:23
16 that is authorized under bridge contract 15:02:28
17 situations. 15:02:30

18 Q All right. Do any of the -- if, as 15:02:32
19 Mr. Freeman asked you, if there were line items to 15:02:36
20 change the amount of takeout meals in a bridge 15:02:40
21 contract, does that alter any of the terms of the 15:02:43
22 2018 solicitation? 15:02:47